

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11429 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

=====

1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

RAMSWARUP PURANDAS MODI

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner
MR SAMIR DAVE, APP, for Respondent No. 1
MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 16/02/2001

ORAL JUDGEMENT

#. This petition under Article 226 of the Constitution of India is directed by the petitioner against the order dated 12.9.2000 of District Magistrate, Ahmedabad under which he was ordered to be detained in exercise of powers under the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980

(hereinafter referred to as Act).

#. Manifold contentions have been raised by the learned counsel for the petitioner challenging this order of the detaining authority but as this petition deserves acceptance on the ground that there is long delay in deciding the representation of the petitioner by the Central Government, it is not necessary as well as advisable to consume unnecessarily valuable judicial time of this court giving decision on all contentions.

#. The learned counsel for the petitioner contended that wife of the petitioner made representation against the detention of the petitioner to the Central Government i.e. it was addressed to the Hon'ble Minister, Government of India, Consumers Affairs Department, New Delhi. The representation was sent on 1.11.2000 under Registered Post A.D. but the same has not been decided. In support of this contention the learned counsel for the petitioner placed reliance on the decision of the apex court in the case of T.A.Abdul Rahman Vs. State of Kerala & Ors., AIR 1990 SC 225.

#. The learned counsel for the petitioner submits that on 12.12.2000 the petitioner applied for amendment of the petition which has been granted on 19.12.2000. By this amendment the petitioner has stated that the copy of the representation dated 1.11.2000 received in the office of Hon'ble Minister of Consumer Affairs Department, New Delhi on 3.11.2000. The petitioner also produced copy of the postal acknowledgment receipt. He submits that reply to the amended portion of the writ petition has not been filed by the respondent-Union of India. Concluding arguments it is submitted that for nonfiling of the reply it has to be taken that the representation of the petitioner has not been decided.

#. Ms.P.J.Davawala, learned counsel for Union of India prayed that the matter may be adjourned so that the Union of India may file reply to the amended portion of the petition. I do not find any justification in this prayer made by the learned counsel for the Union of India. This amendment of the petition was permitted by this court on 19.12.2000 and after almost about 2 months this matter has come up for hearing. The Union of India had enough time to its disposal if it really desirous of filing of the reply to the amended writ petition. These are detention matters related to the personal liberty of a citizen and I fail to see and find any justification in this approach of Union of India. If in the detention matters where the question of personal liberty of a

citizen is there the Union of India acts, behaves and proceeds in lethargic manner then certainly it has to be deprecated and it is accordingly deprecated.

The learned counsel for the Union of India next submitted on oral instruction from the respondent Union of India that the representation which is alleged to have been sent to the Hon'ble Minister, Consumer Affairs Department, New Delhi is not received by the Union of India. Ms.Davawala has insisted that this oral statement made on instruction has to be accepted. The court put a pertinent query to the learned counsel for the Union of India to show any authority of the apex court or of this court or any other High Court where this view is taken that whatever the counsel for the Union of India orally states on instruction is to be taken to be pleading in writing and the court is bound to accept the same. Then she has taken a somersault and submitted that it is not her contention that whatever stated orally by her on instruction is to be accepted by this court. Be that as it may. Rules of the pleadings is expected to be known to the Union of India and in case specific pleading made by the petitioner are not denied by the Union of India, it has to be taken to have been admitted. This oral statement made on instruction cannot partake the character of the pleading nor on this statement any reliance can be placed. If this procedure what it is suggested is adopted in such matters it will prove to be very dangerous. On merits she submitted that the representation of the petitioner filed through advocate i.e. dated 6.11.2000 has been decided expeditiously after receipt of the same from State Government.

#. I have given my thoughtful consideration to the submissions made by the learned counsel for the petitioner and the Union of India.

#. The counter affidavit on behalf of the Union of India is there on record. This is the affidavit of one R. N. Tripathi, Under Secretary, Ministry of Consumer Affairs, Food and Public Distribution, New Delhi. In para (g) of the Special Civil Application, the petitioner made a specific averment that his wife made a representation dated 1.11.2000 by registered post A.D. to the Honourable Minister, Government of India, Consumer Affairs Department, Krishi Bhavan, New Delhi. A copy of this representation is also enclosed to this petition by the petitioner at Annexure-C to the petition. The petitioner further pleaded that the respondent no.4-Union of India has to satisfy this Court as to when the said representation dated 1.11.2000 was received in the office

of the Honourable Minister and thereafter how it was dealt with in his office. It is submitted that the Honourable Minister is competent to decide the representation made on behalf of the petitioner against detention order. Concluding his pleadings it is stated that respondent no.4 failed to consider the said representation and therefore the continued detention of the petitioner became bad in law.

#. In the reply to this Special Civil Application filed on behalf of the Union of India in para 2 thereof it is stated that the contents of sub-paragraphs (d), (e), (g) and (i) of para 4 of the petition concern the Union of India. So it is the admitted case of the Union of India that the averments made in para 4(g) of the petition concern Union of India. In para 3 the reply has been given to the contents of Special Civil Application made in sub-paragraphs (d) and (e) of para 4 of the petition. In para 4 of the affidavit the Union of India had given reply to the contents of the petition in sub-paras (g) and (i) of para 4 of the petition. I have gone through the contents of para 4 of the reply of the Special Civil Application filed by Union of India and I am constrained to observe that the deponent thereof Shri R.N. Tripathi, Under Secretary, Department of Consumer Affairs, New Delhi, has very conveniently avoided to give any reply whatsoever to the contents of sub-para (g) of 4 of the petition regarding the representation of the petitioner dated 1.11.2000 sent by his wife to the Hon'ble Minister, Government of India, Consumer Affairs Department, Krishi Bhavan, New Delhi. In para 4 of the affidavit though it is purported to be given out as if the reply is made to the contents of sub-para (g) of para 4 of the petition, but, if we go by the contents thereof I find that the reply is only given to the contents of sub-para (i) of para 4 of the Special Civil Application. From this reply of the Union of India it is clear that there is no dispute on the following facts:-

- (1) On 1.11.2000 the wife of the petitioner made a representation against the detention of the petitioner.
- (2) This representation has been sent by the wife of the petitioner addressed to the Honourable Minister, Government of India, Consumer Affairs Department, Krishi Bhavan, New Delhi.
- (3) It was sent by registered post A.D.
- (4) Copy of the representation is there on the record

of the petition.

(5) This representation has not been decided by the Union of India.

#. Naturally when the Union of India has remained conspicuously silent in respect of the matter, the petitioner was correct in his approach to go for the amendment of the petition and to file documents, namely, postal receipts and A.D. receipt. In the amended petition, the petitioner has made a statement that on 3.5.2000, representation was received by the Union of India. So long as the averments made in the petition are not denied the petitioner would have been correct in his approach not to produce copy of the postal receipt and A.D. receipt but the way and the manner in which the Union of India has proceeded in this case, by way of abundant precaution these two documents have been produced and this approach of the petitioner deserves appreciation. This conduct of the officers of impersonal machinery of Union of India not to give reply to the representation of the petitioner sent through his wife to the Hon'ble Minister on 1.11.2000 is difficult to appreciate. The officer of the Union of India probably not aware of the fact that ours is a welfare State, it is not concerned with the result of the litigation but is only concerned with that fairly and candidly all the facts are presented in the Court and its gives assistance to the Court so that it may decide the matter according to law. Whether the Union of India wins or loses in a case hardly matters to it. But, if we go by the affidavit of Shri R.N. Tripathi, Under Secretary, Consumer Affairs Department, Food and Public Distribution, I am constrained to observe that this officer has not acted as an officer of a welfare State. His approach is worse than the approach of an ordinary litigant in the Court. He should have understood that he is the officer of the Union of India. His duty is to place all the facts of the case candidly and fairly before the Court and to give the Court assistance so as it can decide the matter in accordance with law. Not only this, this Officer has failed to notice what is his duty which he owes to the public. It is difficult to accept that this Officer would not have gone through the contents of the para 4 (g) of the Special Civil Application. This presumption can be drawn on the basis of his own statement made in para 2 of the affidavit that the contents of sub-para (d), (e) (g) and (i) of para 4 of the petition concern Union of India. From reading of this statement of the deponent, in my considered opinion this inference as aforesaid can reasonably be drawn by

the Court. Now the question which falls for the consideration of the Court is why the contents of para (g) of para 4 of the petition have not been replied by the deponent. As stated earlier, it cannot be taken that he was ignorant of these averments. The fact that he was knowing these contents and have gone through the same but has not chosen to file reply with regard to these contents, from this an inference reasonably can be drawn that possibly it may be a deliberate attempt on his part so as to give an easy assail to the petitioner to get himself released from this detention. Naturally, in case what is averred by the petitioner in sub-para (g) of para 4 of the petition is not denied, then, in view of the decisions of the Honourable Supreme Court in many cases the continued detention of the petitioner may be invalid. From this affidavit of Shri Tripathi it is clear he would not have deliberately given reply to the contents of para 4(g) of the petition and naturally non-reply to the contents of this para will help the petitioner in the court to get himself released from the detention. This favour extended to the petitioner may or may not with consideration. This is not the end of the matter. The petition has been amended and the petitioner has produced documentary evidence to support the factual averments made by the petitioner in sub-para (i) of para 4 of the petition. Though sufficient time was available to the Union of India, its officers have chosen not to file reply to the amended petition and this conduct of the officers further goes to show that they have also favoured the petitioner. This approach of the officers of the Union of India compels this Court to draw an inference that they do not want to put any hurdle in the way of the petitioner to get himself relived of this detention. It is unfortunate that in our country the accountability cell may not be there for the officers or if it is there it may not be functioning. Otherwise, these lapses made by the Officers in the judicial matters are to be taken seriously. It is not gainsaid that in the detention matters there are all possibilities that helping hand is given to the detenu by the officers of the Union of India or the State Government. This helping hand given by the officers of the Union of India with or without consideration is matter of inquiry. This Court cannot give premium to the lapses, carelessness, negligence of the officers of the Union of India. In almost all the detention orders made by the State Government, serious lacunae and lapses are noticed. I do not find any merit in the contention of the learned counsel for respondent no.4 that the letter dated 1.11.2000 i.e. representation sent by the petitioner's wife was not received by respondent no.4. The averments

made in this regard are not controverted by the respondent no.4 and the same are to be accepted. By amendment of the petition, the petitioner produced documents also to prove this fact. From the facts of this case which emerge from the petition, reply, coupled with the fact that no affidavit-in-reply was filed to the amended petition, I am satisfied that the petitioner has proved to the satisfaction of the Court that he sent a representation against the detention order to the Union of India which was received by the Union of India on 3.11.2000 but till date it is not decided. I do not find any justification whatsoever in this approach of the Union of India not to give reply to the averments made by the petitioner. This oral statement made on instruction by the learned counsel for respondent no.4 also deserves no acceptance. It is a case where the representation made by the petitioner to the Union of India against the detention order which is dated 1.11.2000 has not been decided and accordingly the continued detention of the petitioner is wholly unreasonable and arbitrary.

##. In the result, this petition succeeds and the same is allowed. The order of detention of the petitioner dated 10.10.2000 passed by the District Magistrate, Ahmedabad, detaining the petitioner under the Prevention of Black-Marketing and Maintenance of Essential Commodities Act, 1980, is quashed and set aside. The petitioner - Ramswarup Purandas Modi, the detenu, at present in Navsari Jail, Navsari, be set at liberty forthwith if he is not required in any other case. Rule is made absolute accordingly. The Union of India is directed to pay costs of Rs.10,000/= to the petitioner.

##. The learned counsel for the respondents opposed awarding of the cost of this litigation to the petitioner. Firstly it is the discretion of the court to award the costs. So, there is a little scope for raising such an objection by the learned counsel for the respondents. Otherwise also I consider it to be a fit case to award the costs as litigation in the court heavily costs. The learned counsel for the petitioner made a statement on being put by the court that he has charged Rs.10,000/= as a fees from the petitioner to provide him his professional services in this case and this amount has been paid by the petitioner to him. It is the question of the personal liberty and the petitioner is free to engage any advocate of his choice. There is no law which requires that he has to engage an advocate which charge lesser fees. Either in the Advocates Act or any other Act, rule or regulation schedule of fees to be charged by an advocate in a given

category of case has not been prescribed. In the absence of such a legislation the Advocates are free to charge any amount in the case for rendering their professional services. The advocate is a professional and if any body approaches to him to provide his professional services he can charge his own fees. This is not the only money which would have been spent by the petitioner, but in addition to this he would have spent money for typing charges, court fees and other misc. expenses of filing of the petition but the counsel for the petitioner has not produced any bill of expenses and as such that cannot be awarded to the petitioner.

##. The Union of India, impersonal machinery is not at fault in the matter. Its only fault may be that it has no control over its officers or it has not taken its officers to the task for their negligence, recklessness, carelessness and unmindful of the duties which they owe to the people. Because of this negligence, recklessness, carelessness and unmindful of the duty of the concerned officer the reply to the amended Special Civil Application has not been filed. Whatever the amount comes from the exchequer it is a peoples' money and this money has to be paid to the petitioner by the Union of India not for its own fault but for the negligence, carelessness, reckless and unmindful of duty of its officer concerned in this matter. The Union of India through the Secretary, Ministry of the Consumer Affairs and Public Distribution, New Delhi is directed to hold an inquiry in the matter and whosoever officer is found responsible for not filing of the reply to the amended Special Civil Application in the inquiry this amount of the cost has to be recovered from him. This inquiry is to be completed within a period of six months from the date of receipt of the writ of this order. The Secretary, Ministry of the Consumer Affairs and Public Distribution, New Delhi to report the Compliance of this order to the court. Unless it is scrupulously done and the officers who are found negligent, careless and unmindful of their duties as a result of which the Union of India has suffered monetary loss and that amount is recovered from the erring officers its House will not be corrected.

(S.K.Keshote, J.)

*Mohd/Pvv